

The Honorable Ronald B. Leighton

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NEW YORK STUDIO, INC., ATLAS
INTELLECTUAL PROPERTIES, LLC, and
RISE OF THE PHOENIX, INC.,

Plaintiffs,

v.

BETTER BUSINESS BUREAU OF ALASKA,
OREGON AND WESTERN WASHINGTON,

Defendant.

No. 3:11-cv-05012-RBL

ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT BETTER
BUSINESS BUREAU OF ALASKA,
OREGON AND WESTERN
WASHINGTON

Defendant, Better Business Bureau of Alaska, Oregon & Western Washington,
(hereinafter ("BBB")) answers and alleges and as follows:

ANSWER

PARTIES

1. Defendant BBB denies for lack of knowledge.
2. Defendant BBB denies for lack of knowledge.
3. Defendant BBB denies for lack of knowledge.
4. Defendant BBB admits that it is a Washington non-profit corporation which is licensed by the Council of the Better Business Bureaus, Inc. ("CBBB"), a Delaware corporation, to use the name and trademarks of the CBBB subject to certain terms and conditions. Defendant BBB further admits that its registered office is located at 1000 Station Drive, Suite 22, DuPont,

ANSWER & AFFIRMATIVE DEFENSES - 1
(3:11-cv-05012-RBL)

GORDON & REES LLP
701 5th Avenue, Suite 2100
Seattle, WA 98104
Telephone: 206-695-5100
Facsimile: 206-689-2822

1 Washington 98327, but otherwise denies the remaining allegations in this paragraph of Plaintiffs'
2 complaint.

3 JURISDICTION AND VENUE

4 5. This paragraph contains a legal conclusion for which no response is required. To the
5 extent this paragraph may be deemed to require a response, Defendant BBB lacks knowledge or
6 sufficient information to form a belief as to the truth of the allegations as stated and therefore denies
7 the same.

8 6. Defendant BBB admits that this Court has personal jurisdiction over it for the
9 purported claims, but denies that Plaintiffs have any claims as asserted.

10 7. Defendant BBB admits that venue is proper for Plaintiffs' purported claims, but
11 denies that Plaintiffs have any claims as asserted.

12 8. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
13 truth of the allegations as stated and therefore denies the same.

14 ALLEGATIONS OF FACT

15 9. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
16 truth of the allegations as stated and therefore denies the same.

17 10. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
18 truth of the allegation as stated and therefore denies the same.

19 11. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
20 truth of the allegations as stated and therefore denies the same.

21 12. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
22 truth of the allegations as stated and therefore denies the same.

23 13. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
24 truth of the allegations as stated and therefore denies the same.

25 14. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
26 truth of the allegations as stated and therefore denies the same.

1 15. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
2 truth of the allegations as stated and therefore denies the same.

3 16. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
4 truth of the allegations as stated and therefore denies the same.

5 17. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
6 truth of the allegations as stated and therefore denies the same.

7 18. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
8 truth of the allegations as stated and therefore denies the same.

9 19. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
10 truth of the allegations as stated and therefore denies the same.

11 THE PHOENIX BBB'S "BUSINESS RELIABILITY REPORT"

12 20. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
13 truth of the allegations as stated and therefore denies the same.

14 21. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
15 truth of the allegations as stated and therefore denies the same.

16 22. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
17 truth of the allegations as stated and therefore denies the same.

18 23. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
19 truth of the allegations as stated and therefore denies the same.

20 24. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
21 truth of the allegations as stated and therefore denies the same.

22 25. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
23 truth of the allegations as stated and therefore denies the same.

24 26. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
25 truth of the allegations as stated and therefore denies the same.

26 27. Defendant BBB lacks knowledge or sufficient information to form a belief as to the
27 truth of the allegations as stated and therefore denies the same.

THE ALASKA BBB'S "CONSUMER WARNING"

28. Defendant BBB admits that one day before a scheduled event at the Dena'ini Civic and Convention Center in Anchorage, Defendant BBB issued a press release. Attached as **Exhibit A** is a true and correct copy of the press release issued by Defendant BBB. Defendant BBB specifically denies knowing that the event was a "The" audition event. To the extent any allegations in this paragraph remain unanswered, Defendant denies.

29. Defendant BBB denies that the October 8, 2010 press release contained any false statement or identified "The" by name. In fact, the Alaska press release did not identify any specific company name, including "The" or any other company name affiliated with "The". Attached as **Exhibit A** is a true and correct copy of the press release issued by Defendant BBB on October 8, 2010. This press release is separate and distinct from the press release issued by the Phoenix BBB, which is attached hereto as **Exhibit B**.

30. Defendant BBB admits **Exhibit A** was disseminated to media outlets and the general public. As to the remainder Paragraph 29, Defendant denies.

31. Defendant BBB denies.

THE EFFECTS OF FALSE STATEMENTS

32. Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

33. Defendant BBB denies that any of its statements were defamatory. As to the remaining allegations, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same..

34. Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

35. Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

COUNT I: DEFAMATION

36. Defendant BBB repeats and incorporates by reference its responses to paragraphs 1 through 35 as though set forth fully herein.

37. Defendant BBB denies. By way of further answer, Defendant BBB states that the alleged statements contained in this paragraph were not contained at all in its press release issued on October 8, 2010, as demonstrated by **Exhibit A**, but rather, the alleged statements in this paragraph can be found in the Phoenix BBB press release as demonstrated by **Exhibit B**.

38. Defendant BBB denies.

39. Defendant BBB denies.

40. Defendant BBB denies.

41. Defendant BBB denies.

42. Defendant BBB denies.

43. This paragraph contains a legal conclusion for which no response is required. To the extent this paragraph may be deemed to require a response, Defendant BBB denies.

44. Defendant BBB denies.

45. Defendant BBB denies that it made any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

46. Defendant BBB denies.

COUNT II: TORTIOUS INTERFERENCE WITH
CONTRACT AND/OR BUSINESS EXPECTANCY

47. Defendant BBB repeats and incorporates by reference its responses to paragraphs 1 through 46 as though set forth fully herein.

48. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

49. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

50. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

51. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

52. Defendant BBB denies.

53. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

54. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

55. Defendant BBB denies that it made or published any false statements. As to the remaining allegations in this paragraph, Defendant BBB lacks knowledge or sufficient information to form a belief as to the truth of the allegations as stated and therefore denies the same.

56. Defendant BBB denies.

57. Defendant BBB denies.

58. Defendant BBB denies.

COUNT III: VIOLATION OF
ALASKA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

59. Defendant BBB repeats and incorporates by reference its responses to paragraphs 1 through 58 as though set forth fully herein.

60. Defendant BBB admits.

61. Defendant BBB denies.

62. Defendant BBB denies.

63. Defendant BBB denies.

GENERAL DENIAL

Any allegations or statements in the Complaint, including Plaintiffs' Prayer for Relief contained in paragraphs (i) through (xv), not expressly admitted are denied.

AFFIRMATIVE DEFENSES

By way of further answer and without waiving any allegations previously denied, Defendant asserts the following affirmative defenses:

1. Plaintiffs have failed to state a claim upon which relief can be granted.

2. The allegations and inferences in Plaintiffs' complaint do not support any legal claim and are subject to dismissal under Civil Rule 12(c).

3. Plaintiffs claims are subject to dismissal under Anti-SLAPP statutes, RCW 4.24.510 and RCW 4.24.525.

4. Plaintiffs have failed to state a claim upon which relief can be granted in that they have failed to plead any published statement by the BBB that is a materially false statement of fact.

5. Plaintiffs' damages, if any, were proximately caused by or contributed to by acts, omissions, breaches of contract and/or other legal duties of the Plaintiffs.

6. The acts and alleged injuries, if any, were proximately caused by or contributed to by the acts, omissions, breaches of contract and/or other legal duties of third parties over whom Defendant BBB had no control.

7. Plaintiffs have failed to mitigate the alleged damages, if any.

8. At all times, Defendant BBB acted in good faith, with legal justification and privilege, and without having any serious doubts about the truth of any of the publications for which it is legally responsible.

9. All statements of Defendant were privileged.

10. All statements regarding Plaintiffs by Defendant were true.

11. Plaintiffs can be considered public figures for purposes of their claims.

12. The liability of Defendant, if any, is several only.

13. Plaintiffs have failed to join indispensable parties without whom complete relief cannot be afforded.

14. The damages sustained by Plaintiffs were unavoidable from the standpoint of Defendant.

15. Plaintiffs' damages are limited by the doctrine of after acquired evidence.

16. In the event a judgment is rendered in favor of Plaintiffs, or there is compromise of this doubtful and disputed claim, Defendant is entitled to an offset for any advance payment of funds made by Defendant toward payment of damages.

17. Awarding Defendant costs and reasonable attorneys' fees for the necessity of responding to Plaintiffs' frivolous action pursuant to RCW 4.84.185,

18. Awarding Defendant costs and reasonable attorneys' fees along with the statutory award of \$10,000 for the necessity of responding to Plaintiffs' Complaint pursuant to RCW 4.24.510 and RCW 4.24.525.

19. Pending further discovery, Plaintiffs' claims may be barred by the doctrines of estoppel, laches and other defenses set forth in Fed. R. Civ. P. 8(c).

20. Pending further discovery, Plaintiffs' claims may be subject to the defenses set forth in Fed. R. Civ. P. 12(b).

RESERVATION OF RIGHTS

In further answer, Defendant reserves the right to add additional defenses and make further claims as may be warranted by discovery.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant BBB prays the Court for the following relief:

1. That Plaintiffs take nothing by the Complaint and that it be dismissed with prejudice;

2. That Defendant BBB should be awarded attorney fees, costs and expenses incurred,
including damages, fees, and costs associated with RCW 4.24.525; and,

3. For such other and further relief as this Court may deem just and equitable.

DATED this 4th day of February, 2011.

GORDON & REES LLP

s/Laurie L. Johnston

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Attorneys for Defendant

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I electronically filed a true and accurate copy of the document to which this declaration is affixed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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P.O. Box 1157
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bmaxa@gth-law.com

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Dunlap, Grubb & Weaver, PLLC
199 Liberty Street, S.W.
Leesburg, VA 20175
glundwig@dglegal.com

Dated this 7th day of February, 2011, at Seattle, Washington.



Andrea W. Preston

EXHIBIT A

To: Public Relations

Subject: BBB Release: BBB Urges Caution For Those Attending Saturday's Child Talent Auditions

PRESS RELEASE - FOR IMMEDIATE RELEASE

For More Information Contact:

Tara Sims, Alaska Public Relations Manager

907.562.0704 | pr@thebbb.org

BBB URGES CAUTION FOR THOSE ATTENDING SATURDAY'S CHILD TALENT AUDITIONS

Anchorage, Alaska – Oct. 8, 2010 – Better Business Bureau is receiving inquiries about a company holding talent auditions for kids at the Dena'ina Civic and Convention Center in Anchorage on Saturday, Oct. 9.

Advertisements encourage consumers to call 888-999-8073 to try to get a chance for kids to audition. The ads mention well-known names like "Disney" and other popular shows and stars. However, the company name is not mentioned.

BBB serving Alaska, Oregon and Western Washington tried contacting the advertised number for more information but was told they "don't deal with the Better Business Bureau" and the company representative disconnected the call.

BBB encourages caution for those planning to attend Saturday's event; especially if offered "opportunities" that cost money.

In general, BBB does not suggest purchasing from a company who will not provide full contact information; including full business name, phone number and address.

Talent and modeling agency complaints commonly come to BBB from would-be models or parents who believe their kids have star potential. Typically, hopefuls are asked to pay upfront fees for the agency to find them work. Complainants allege, despite paying hundreds or thousands, the agency found them few, if any, jobs.

Before purchasing services from a talent agency:

Get all contact information and research the business: Get a free BBB Reliability Report at www.bbb.org. Research the company on an Internet search engine. If applicable, check for state business licensing.

Beware of big promises and high pressure sales pitches: In the acting and modeling world, income is never guaranteed and jobs can be sporadic. Consider it a red flag if the sales pitch promises big jobs and earnings or uses high pressure tactics to get consumers to sign up without thinking it through first.

Get details in writing: Read agreements carefully, making sure verbal promises are contained. Look for details regarding refunds and recourse if dissatisfied.

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About your BBB serving Alaska, Oregon and Western Washington: Better Business Bureau is a neutral not-for-profit organization with the mission to advance marketplace trust. BBB is supported by BBB Accredited Businesses and provides ethical business standards, BBB Reliability Reports, Charity Review Reports, complaint handling, marketplace events and tips. For more information, contact BBB or visit www.bbb.org.

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EXHIBIT B

FOR IMMEDIATE RELEASE

Contact: Michelle L. Corey, 314-645-4636 (unlisted), mcorey@stlouisbbb.org
Bill Smith, 314-645-4636 (unlisted), tpc1@stlouisbbb.org

**BBB Asks Parents to Be Wary of Chesterfield
Acting and Modeling Event This Weekend**

St. Louis, Mo., August 13, 2010 – *The*, a sometimes- controversial Arizona company that claims to help aspiring young actors and models break into the entertainment business, has scheduled a series of auditions with St. Louis area youngsters tomorrow (Saturday) at The Doubletree Hotel & Conference Center in Chesterfield, Mo.

The Better Business Bureau (BBB) suggests that parents who have scheduled appointments for their children at the auditions be cautious when attending the event. While there is no charge for attending Saturday's auditions, the company's website says the families of those children who are invited to a private, performing arts competition in December in Orlando, Fla., will be charged \$1,950 or more for that event.

In May 2009, Connecticut Attorney General Richard Blumenthal announced that *The* (pronounced 'Tay') had agreed to grant consumers full refunds in advance of an event in that state and also agreed to forfeit \$25,000 to the state. "The settlement resolves claims that the organization's contracts are defective and flawed and provides for changes in business practices," Blumenthal said.

Last month, KMBC- TV in Kansas City reported that a Lee's Summit, Mo., woman said she paid the company \$21,000 for her three children to attend the Orlando event. The woman told the station that after researching the company, she would ask for a refund. She said that even though she was told that only a limited number of children would receive invitations to the Orlando event, all of her children and all of her friends' children received invitations.

The St. Louis BBB issued a news release on the company in March 2009, warning parents that the free event ultimately could end up costing thousands of dollars. The company has an "F" grade with the Phoenix BBB, the lowest grade possible.

(More)

Michelle Corey, president and CEO of the BBB, said, "Every parent wants to believe that his or her child could be the next Hollywood sensation. The truth is the odds of this happening are remote at best. If a family wants to take their child to Florida, a better investment might be a trip to Disney World."

Two BBB employees who phoned a toll-free number advertised on a St. Louis radio station were told the event was free and were not informed of subsequent paid events. A young woman who spoke to one of the BBB employees said, "Leave your wallet at home; good luck to your family." She also said that Christopher Ledford, representing a national talent agency, also would be attending the Chesterfield event. Several other telemarketing employees returned phone calls to a BBB employee, and said the Saturday event was an "acting and modeling audition. We showcase talent for Disney shows and Virgin records."

The website for the Orlando event, www.theeventsorlando.info/, said the December event "provides a rare opportunity for aspiring models and actors to perform live in front of dozens of the industry's most influential people. From agents and managers to casting directors and celebrities, participants receive valuable information and networking opportunities to help make dreams become a reality."

The company, responding to e-mails sent by the BBB to a Washington, D.C., attorney, said the Saturday event is for children ages 6-17. The Orlando event in December, the company said, "is an amazing, family friendly event hosted in the amazing Walt Disney World Swan and Dolphin Resort Orlando." Those events "combine Disney World fun, celebrities, dance parties, live concerts, Q & A with industry professionals, a Hollywood style red carpet, an 'Oscars' night award show, and \$50,000 in prize money."

The BBB offers the following tips for families interested in pursuing modeling and acting careers for their children:

- Be very careful about any requests for up-front payments in the form of registration, consultation or administrative fees.
- Understand that this is a very competitive business and a paid seminar or event may not be the best way to get agents and others to notice your child.
- Be wary of any promises of guaranteed employment or high earnings.
- Be cautious of companies that try to convince you to pay them money by throwing out names of known celebrities, motion picture studios or recording companies.
- Check business Reliability Reports at www.bbb.org or by calling 314-645-3300.